

### **73-29-103 Declarations.**

The Legislature declares:

- (1) the Utah Constitution's specific private property protections, including recognition of the inalienable right to acquire, possess, and protect property and the prohibition on taking or damaging private property for public use without just compensation, protect against government's broad recognition or grant of a public recreation easement to access or use public water on private property;
- (2) general constitutional and statutory provisions declaring public ownership of water and recognizing existing rights of use are insufficient to overcome the specific constitutional protections for private property and do not justify inviting widespread unauthorized invasion of private property for recreation purposes where public access has never existed or has not existed for a sufficient period and under the conditions required to support recognition under this chapter;
- (3) whether, or to what extent, a public easement exists for recreational use of public waters on private property is uncertain after judicial decisions in the cases of *J.J.N.P. Co. v. State*, 655 P.2d 1133 (Utah 1982) and *Conatser v. Johnson*, 194 P.3d 897 (Utah 2008), which decisions did not address the constitutional prohibition on taking or damaging private property without just compensation;
- (4) legislative failure to provide guidance before, coupled with legislative inaction after the 1982 decision in *J.J.N.P. Co. v. State* form a compelling foundation for the Legislature to affirm a limited right to float on the water without violating the constitutional protections of the underlying private property;
- (5) the real and substantial invasion of private property rights did not occur with recognition of the right to float on water that passes over the land, but with the right, first recognized in *Conatser v. Johnson*, to physically occupy the land for an indeterminate time and for a wide range of activities by the public against the owner's will and without just compensation;
- (6) its intent to foster restoration of the accommodation existing between recreational users and private property owners before the decision in *Conatser v. Johnson*, affirm a floating right recognized by the court in *J.J.N.P. Co. v. State*, and recognize adverse use as a constitutionally sound and manageable basis for establishing a limited right of public recreational access on private property in accordance with this chapter.

Enacted by Chapter 410, 2010 General Session